

Mary Flynn



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solicitors

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Our Ref: KC/F492/3

Your Ref:

Date: 2 August 2011

The Planning Committee
Basildon District Council
The Basildon Centre
St Martins Square
Basildon Essex
SS14 1DL

By email on Neil.Costen@basildon.gov.uk & Lorraine.Browne@basildon.gov.uk

Dear Sirs

Re: Our Client - Mary Flynn & others
31 Beauty Drive Dale Farm, Billericay Essex CM11 2YJ
Housing Legal Aid

We act on behalf of the above whose husband died on 2nd Oct 2010 and we write in relation to the decision that we understand you are taking today finalising arrangements for who, if anyone might be exempted from the scheduled site clearance at Dale Farm. Could you put a copy of this letter before the relevant planning committee members?

We understand that the site clearance is pursuant to section 178 of the T&CPA 1990 which provides:

178 Execution and cost of works required by enforcement notice

[(1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may—

(a) enter the land and take the steps

1. We ask that you confirm that the scheduled eviction would not involve plot 31 because no enforcement notice against residential use has ever been served, (see paragraphs 4,5,& 24 of Inspector Morden's report dated 13th Oct 2005 which refer to the absence of an enforcement notice relating to residential use on plot 31)
2. Please confirm that the Council's intended use of direct action under section 178 will not be in respect of Mary Flynn's plot 31

We are also in receipt of instructions from Nora Sheridan who resides on 31 Beauty Drive and has 3 children aged 12,6 & 10. Jean O'Brian who resides on 11 Swallow Court and has just had heart surgery. Jean Gammell, Bridget Gammell her 3 children and Cornelius



Members: Sarah Burchell BA, Patricia Gore BA, Keith Lomax BSc, PhD, Elsie Todd BA

Assistant solicitors: Keith Coughtrie LLB, Colleen Dooner LLB, LLM, Helen Fawcett BSc, Maria Goodyear LLB,

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Sheriden who has acute health needs and whom reside on 29 Beauty Drive.

3. In any event we take the view that you might agree that eviction should not proceed in respect of plots occupied by individuals with medical conditions which are so acute (in the absence of anywhere else to go) that eviction could even risk admission to hospital and we ask that you confirm that these plots will be omitted from the intended site clearance scheduled to take place in September. Our client Mary Flynn has a nebuliser which needs a power supply without which she would have great difficulty breathing.
4. We are also very concerned regarding the trauma which might be experienced by children on the rest of the site witnessing the mass eviction taking place around them and request that you consider at your meeting this evening, what would be in their best interests. "Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms". Per Lord Kerr in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 [2011] 2 All ER 783 @ 46
5. We point out that our client falls within the statutory definition of Gypsies and Travellers who reside or resort to your area for the purposes of section 225(1) of the Housing Act 2004. Do you agree?
6. If that is so we assume that you will in the light of the changes introduced by the Localism Bill either accept the regional assessment of need in Basildon (rather than its suggested allocation of pitches which will be abolished) or perhaps instead be carrying out a fresh assessment of our client's accommodation needs and be arranging to meet those accommodation needs by way of an effective strategy capable of delivering the required supply of sites. Since a robust assessment has already been completed we don't see the need for another one.
7. Leaving our client in situ can be justified until you have decided if she is residing or resorting for the purposes of section 225 (1) of the 2004 Act. We would like to know how long it might take for the Council to decide if it is going to carry out a fresh G&T accommodation assessment, or if that decision has already been taken. Please respond on this point because a council that accepts it has a responsibility to meet the long term accommodation needs of those it is seeking to evict may be expected to take a different view to one which believes it owes no such responsibility.
8. Failing your agreement to omit our client from the scheduled site clearance we invite you to let the Court decide whether or not eviction of these individuals would or would not be entirely unacceptable and disproportionate; we would undertake to issue a claim for an injunction in order to get the matter before the court on behalf of named individuals and propose speedy directions for trial that could be listed before evictions of those named, took place. We envisage the matter being decided before the end of September.
9. Our client who we agree has lost a section 78 appeal, but who is not acting in breach of the criminal law relies on section 7 of the HRA 1998 which provides that :- "(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may bring proceedings against the authority under this Act in the appropriate court or tribunal." We know you agree that our

client's rights under the ECHR will be engaged by the prospective impact of eviction and by having to leave where she has been living for so long. We invite you to agree speedy directions for trial in order to let the Court decide if the interference would be unlawful on account of the four matters raised above (i) s 174 does not apply, so the intended entry on the land for site clearance would be a trespass (ii) wholly disproportionate to evict person with breathing difficulties (iii) that the scheduled eviction is not in the best interests of the children and (iv) the council have yet to decide if Mary Flynn (and each individual on her plot) is a person who resides or resorts for the purposes of s225 HA 2004.

10. Depending on your response we reserve our client's position in relation to issue of proceedings for which she would be publicly funded. We hope we can at least obviate the need for interim relief

We look forward to your response

Yours faithfully

Keith Coughtrie
For and on behalf of
Davies Gore Lomax LLP

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- (1) Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may—
- (a) enter the land and take the steps

We ask that you confirm that the scheduled eviction would not involve s10(3) because no enforcement notice against residential use has ever been served. (See paragraphs 4.5.3 & 24 of Inspector Morden's report dated 13th Oct 2005 which refer to the absence of an enforcement notice relating to residential use on plot 31)

2. Please confirm that the Council's intended use of direct action under section 178, will not be in respect of Mary Flynn's plot 31

We are also in receipt of instructions from Nora Sheridan who resides on 31 Beauty Drive and has 3 children aged 12, 6 & 10. Jean O'Brien who resides on 11 Swallow Court and has 3 children aged 12, 6 & 10. Jean Gammell, Bridget Gammell her 3 children and Cornelius

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